



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

May 14, 1957.

Honorable Fred P. Holub
County Attorney.
Matagorda County,
Bay City, Texas.

Opinion No. WW-126

Re: Authority of the
Commissioners' Court to
grant a franchise.

Dear Mr. Holub:

You have requested the opinion of this department
on the following question:

Whether or not a franchise granted by
the Commissioners' Court of Matagorda County,
Texas, authorizing the construction of a
fish-house on a portion of a street in the
unincorporated City of Matagorda, Texas, is
valid.

The Texas courts have repeatedly held that the
Commissioners' Court is a court of limited jurisdiction and
can only exercise such powers as are authorized by the
Constitution and statutes of this State, either by express
terms or by necessary implication. Section 18, Article V,
Tex. Const.; Bland vs. Orr, 90 Tex. 492, 39 S.W.558 (1887);
Childress County vs. State, 127 Tex. 343, 92 S.W.2d 1011
(1936); El Paso County vs. Elam, 106 S.W.2d 393 (Tex. Civ.
App. 1937).

Articles 2351 through 2372j, V.C.S., 1925, as
amended, set out the various powers and duties of the
Commissioners' Court, and are too lengthy to quote in this
opinion. However, it should be pointed out that none of
the heretofore mentioned articles directly or indirectly
gives the Commissioners' Court the authority to grant per-
mission for private use of the county roads here involved.

A Commissioners' Court has been deemed to be with-
out power or authority to grant a franchise to a Power &
Light Company. Attorney General's Opinions Nos. 0-1805,
0-2274 and 0-5726; State ex rel. City of Jasper vs. Gulf
States Utilities Co., 144 Tex. 184, 189 S.W.2d 693 (1945).

A Commissioners' Court has also been held to be
without authority to grant a franchise for the operation of

a jitney-bus. Attorney General's Opinion 0-3192.

We are, therefore, of the opinion that any franchise or other permission granted by the Commissioners' Court of Matagorda County, Texas, authorizing the construction of a fish-house on a portion of a street in the unincorporated City of Matagorda, Texas, is invalid and beyond the scope of Constitutional or statutory authority of the Commissioners' Court.

SUMMARY

The Commissioners' Court is a court of limited jurisdiction and is not authorized by the Constitution or statutes of this State, either expressly or by necessary implication, to grant a franchise or other permission for the construction of a fish-house on a portion of a street in the unincorporated City of Matagorda, Texas, and any such franchise is invalid.

Yours very truly,

WILL WILSON
Attorney General

By *B. H. Timmins, Jr.*
B. H. Timmins, Jr.
Assistant

BHT:jl:rh

APPROVED:

OPINION COMMITTEE
H. Grady Chandler,
Chairman
James W. Wilson
Fred Werkenthin
Ralph R. Rash

REVIEWED FOR THE ATTORNEY GENERAL

By: Geo. P. Blackburn